

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 797

Introduced by Senator Romero

(Principal coauthor: Assembly Member Torrico)

*(Coauthor: Assembly Member Leno Coauthors: Assembly Members
Canciamilla, Coto, and Leno)*

February 22, 2005

An act to amend Section 11357 of the Health and Safety Code, and to amend Section 23222 of the Vehicle Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Romero. Crimes: marijuana: possession: penalty.

Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100.

This bill would instead provide that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of either an infraction, ~~subject to specified procedural provisions and punishable by a fine not to exceed \$100, or a misdemeanor, punishable by a fine not to exceed \$250,~~ and is, for the 2nd or any subsequent offense, guilty of *an infraction or* a misdemeanor

punishable by a fine not to exceed \$250. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11357 of the Health and Safety Code is
2 amended to read:

3 11357. (a) Except as authorized by law, every person who
4 possesses any concentrated cannabis shall be punished by
5 imprisonment in the county jail for a period of not more than one
6 year or by a fine of not more than five hundred dollars (\$500), or
7 by both that fine and imprisonment, or shall be punished by
8 imprisonment in the state prison.

9 (b) (1) Except as authorized by law, every person who
10 possesses not more than 28.5 grams of marijuana, other than
11 concentrated cannabis, is, for the first offense, guilty of ~~either an~~
12 ~~infraction punishable by a fine not to exceed one hundred dollars~~
13 ~~(\$100) or a misdemeanor punishable by a fine not to exceed two~~
14 ~~hundred fifty dollars (\$250), and is, for the~~ *an infraction and is,*
15 *for the* second or subsequent offense, guilty of ~~a misdemeanor or~~ *an*
16 *infraction or a misdemeanor that is* punishable by a fine not to
17 exceed two hundred fifty dollars ~~(\$250). A first offense shall be~~
18 ~~subject to the provisions of subdivision (d) of Section 17 of the~~
19 ~~Penal Code. The fact of a~~ *(\$250). The fact of a* prior conviction
20 shall be alleged in the accusatory pleading.

21 (2) Notwithstanding other provisions of law, if that person has
22 been previously convicted three or more times of an offense
23 described in this subdivision during the two-year period
24 immediately preceding the date of commission of the violation to
25 be charged, the previous convictions shall also be charged in the
26 accusatory pleading and, if found to be true by the jury upon a
27 jury trial or by the court upon a court trial or if admitted by the
28 person, the provisions of Sections 1000 to 1000.5, inclusive, of
29 the Penal Code shall apply to the matter. In any case in which a
30 person is arrested for a violation of this subdivision and does not
31 demand to be taken before a magistrate, the person shall be
32 released by the arresting officer upon presenting satisfactory
33 evidence of identity and giving a written promise to appear in

1 court, as provided in Section 853.6 of the Penal Code, and shall
2 not be subjected to booking.

3 (c) Except as authorized by law, every person who possesses
4 more than 28.5 grams of marijuana, other than concentrated
5 cannabis, shall be punished by imprisonment in the county jail
6 for a period of not more than six months or by a fine of not more
7 than five hundred dollars (\$500), or by both that fine and
8 imprisonment.

9 (d) Except as authorized by law, every person 18 years of age
10 or over who possesses not more than 28.5 grams of marijuana,
11 other than concentrated cannabis, upon the grounds of, or within,
12 any school providing instruction in kindergarten or any of grades
13 1 through 12 during hours the school is open for classes or
14 school-related programs is guilty of a misdemeanor and shall be
15 punished by a fine of not more than five hundred dollars (\$500),
16 or by imprisonment in the county jail for a period of not more
17 than 10 days, or both.

18 (e) Except as authorized by law, every person under the age
19 of 18 who possesses not more than 28.5 grams of marijuana,
20 other than concentrated cannabis, upon the grounds of, or within,
21 any school providing instruction in kindergarten or any of grades
22 1 through 12 during hours the school is open for classes or
23 school-related programs is guilty of a misdemeanor and shall be
24 subject to the following dispositions:

25 (1) A fine of not more than two hundred fifty dollars (\$250),
26 upon a finding that a first offense has been committed.

27 (2) A fine of not more than five hundred dollars (\$500), or
28 commitment to a juvenile hall, ranch, camp, forestry camp, or
29 secure juvenile home for a period of not more than 10 days, or
30 both, upon a finding that a second or subsequent offense has been
31 committed.

32 SEC. 2. Section 23222 of the Vehicle Code is amended to
33 read:

34 23222. (a) No person shall have in his or her possession on
35 his or her person, while driving a motor vehicle upon a highway
36 or on lands, as described in subdivision (b) of Section 23220, any
37 bottle, can, or other receptacle, containing any alcoholic beverage
38 which has been opened, or a seal broken, or the contents of
39 which have been partially removed.

1 (b) (1) Except as authorized by law, every person who
2 possesses, while driving a motor vehicle upon a highway or on
3 lands, as described in subdivision (b) of Section 23220, not more
4 than 28.5 grams of marijuana, other than concentrated cannabis
5 as defined by Section 11006.5 of the Health and Safety Code, is,
6 for a first offense, guilty of ~~either an infraction punishable by a~~
7 ~~fine not to exceed one hundred dollars (\$100) or a misdemeanor~~
8 ~~punishable by a fine of not more than two hundred fifty dollars~~
9 ~~(\$250), and is, for the second or any and is, for the second or~~
10 ~~any subsequent offense, guilty of a misdemeanor or an infraction or~~
11 ~~a misdemeanor that is punishable by a fine not to exceed two~~
12 ~~hundred fifty dollars (\$250). A first offense shall be subject to~~
13 ~~the provisions of subdivision (d) of Section 17 of the Penal Code.~~
14 The fact of a prior conviction shall be alleged in the accusatory
15 pleading.

16 (2) Notwithstanding any other provision of law, if the person
17 has been previously convicted three or more times of an offense
18 described in this subdivision during the two-year period
19 immediately preceding the date of commission of the violation to
20 be charged, the previous convictions shall also be charged in the
21 accusatory pleading ~~and, if found to be true by the jury upon a~~
22 ~~jury trial or by the accusatory pleading and, if found to be true by~~
23 ~~the jury upon a jury trial or by the court upon a court trial or if~~
24 admitted by the person, the provisions of Sections 1000 to
25 1000.5, inclusive, of the Penal Code shall apply to the matter.

26 ~~(4)~~

27 (3) In any case in which a person is arrested for a violation of
28 this subdivision and does not demand to be taken before a
29 magistrate, the person shall be released by the arresting officer
30 upon presentation of satisfactory evidence of identity and giving
31 his or her written promise to appear in court, as provided in
32 Section 40500, and shall not be subjected to booking.